



Flathead Conservation District
133 Interstate Lane, Kalispell, MT 59901
www.flatheadcd.org 406-752-4220

CALL TO ORDER & ATTENDANCE

Chair Ronald Buentemeier called the March 12, 2018, 310-Stream Permit meeting to order at 7:00 P.M. in the conference room.

Board members present:

Ronald Buentemeier, Chairman; Pete Woll, Vice Chairman; Dean Sirucek, Secretary/Treasurer; Lori Curtis, Supervisor; John Ellis, Supervisor; Verdell Jackson, Supervisor; being a quorum of the Board.

Board members absent: Mark Siderius, Supervisor. Absence is excused.

Also in attendance were: Valerie Kurth and Ginger Kauffman, FCD staff; Leo Rosenthal, MFWP; Samantha Tappenbeck, Soil & Water Conservation Districts of Montana (SWCDM); Mike Dalimata; Steve Dalimata; Jason Pohlman; Luke Carlson; Doug Siderius; Robert Corette; Joshua Smith; Greg Gunderson.

MINUTES

Dean Sirucek made a motion "to approve the minutes of the February 26, 2018, business meeting as presented." Verdell Jackson seconded. Motion carried unanimously.

CORRESPONDENCE

1. Email: Whitefish Planning Board Meeting, Thursday, March 15, 2018, 5:00 P.M., Whitefish City Council Chambers. <http://www.cityofwhitefish.org>
2. Email: Whitefish City Council meeting, Monday, March 19, 2018, 7:10 P.M., Whitefish City Council Chambers. <http://www.cityofwhitefish.org>
3. Email: Montana Watershed Coordination Council February 22, 2018, newsletter *Watershed News* <https://mtwatersheds.org/app>
4. Email: Department of Livestock Notice of Administrative Rule changes
Current administrative rule changes can be viewed at:
<http://liv.mt.gov/Home/ARM-Notices>. Contact: Cinda Young-Eichenfels, 406-444-3703, ceichenfels@mt.gov
5. Email: Flathead Audubon March 2018 newsletter *Pileated Post*
<https://www.flatheadaudubon.org>
6. Email: National Association of Conservation Districts (NACD) publications:
NACD eResource, Conservation Clips, Forestry Notes
<http://www.nacdnet.org>
7. Email: Montana Department of Natural Resources and Conservation (DNRC)



Reclamation and Development Grants (RDG) Program. Aquatic Invasive Species Grants are due Thursday March 15, 2018 by 5 pm. For technical questions about AIS projects, contact Stephanie Hester, 406-444-0547, shester@mt.gov. For all other questions about the grant program, administration and reporting contact Heidi Anderson-Folnagy, 406-444-6691, hfolnagy@mt.gov.

8. Email: Envirothon registration Monday, March 12. Envirothon dates April 23-24. Contact: Shonny Nordlund, Fergus Conservation District, 406-538-7401 x 101, fcd@midrivers.com
9. Email: DNRC Montana Invasive Species Program's simple actions to help prevent the introduction and spread of noxious weeds and invasive species. Contact: Stephanie Hester, 406.444.0547, shester@mt.gov dnrc.mt.gov/divisions/cardd/montana-invasive-species-program
10. Email: MACD Calendar of Events <http://macdnet.org/calendar/>
11. Email: The Montana Weed Control Association is hosting a board/commissioner training this spring in Dillon, MT, March 21, 9AM - Noon. Dan Clark of the MSU Local Government Center will be leading this workshop. More information www.mtweed.org, contact Becky Kington at 406-925-0708 or becky@mtweed.org. Note: An eastern board/commissioner training will be held in October in Glasgow.
12. Email: DNRC March 2018 Notes for CD's
DNRC's AIS grants are due March 15. Contact Stephanie at 444-0547 or Heidi at 444-6691
Upcoming workshops and webinars:
 - March 5 – Successful Grant Writing 101
 - March 14 – Writing for Success
 - March 21 – Developing a Grant Scope of Work
 - March 28 – Developing a Grant Budget
 - March 22 – Understanding the Permissive Levy.
 - March 29 – CD Administrative Grant WebinarContact Karl Christians at 444-3022.
13. Email: The Draft Extension of Services Plan is available to download from the City of Whitefish website:
<http://www.cityofwhitefish.org/planning-and-building/long-range-plans.php>
14. Email: Poster contest, "Watersheds: Our Water Our Home". See NACD website:
<http://www.nacdnet.org/general-resources/stewardship-and-education-materials/contests/>
Send digital submissions by email to Melisa Downing, SWCDM, melissa@macdnet.org, or mail to MACD, 1101 11th Ave Helena, MT 59601 by Friday, June 1st. 406-443-5711
15. Email: Stockmanship Workshops, 9:00 A.M. – 3:00 P.M.,
June 4 - Flesch Angus, Shelby, MT
June 5 - Fritz Ranch, Chester, MT
June 6 - Northern Ag Research Center, Havre, MT
Contact Liberty County Conservation District 406-759-5778, Ext. 102
16. Email: The Rosebud Conservation District is holding a 310 Workshop in Forsyth, Tuesday, March 13th, Forsyth Country Club beginning at 10:00 A.M. Lunch will be provided. Contact: Bobbi L Vannattan, Rosebud Conservation, 406-346-7333,



- Ext 101, www.rosebudcd.com
17. Email: Soil & Water Conservation Districts of Montana (SWCDM) March 8, 2018, issue of *The Montana Conservationist*

FINANCIAL

The following bills were reviewed:

1. Birch Grove Community Center \$50.00
2. Byte Savvy \$45.00
3. Flathead Beacon \$612.00
4. MACD \$16,000.00
5. Mountain States Leasing – Kalispell \$1545.56
6. Whitefish School District #44 \$2895.73
7. VISA \$165.50

John Ellis made a motion “to approve the bills as presented.” Lori Curtis seconded. Motion carried unanimously.

PUBLIC COMMENT PERIOD

CFAC, FL2017052, Flathead River: Ronald Buentemeier reported Columbia Falls Aluminum Co has submitted a request for a permit extension as the permit expired 3/1/2018, however the revegetation/plantings have not been completed due to inclement weather conditions.

Ronald Buentemeier motioned “to approve a permit extension until May 1, 2018.” Verdell Jackson seconded. Motion carried unanimously. John Ellis asked how the project went. Luke Carlson explained that the contractor had a team of divers hook cables onto the panels and excavators were used to pull the panels out of the river. A total of 125 panels were removed that had been used to stabilize the toe of the existing protection dike. Because of the permitting constraints and timeframe, they were trying to protect the contaminated zone and tried to stay away from the river by installing the rip rap behind the existing bank. This is where the revegetation/plantings/grass seeding will be placed.

310

Beatty, FL2017035, Flathead River, dock/bank stabilization/irrigation structure: Dean Sirucek reported the landowners submitted a request to table the application for another month. Dean Sirucek motioned “to table until the next 310-meeting.” Pete Woll seconded. Motion carried unanimously.

Boyd, FL2017053C, Nine Mile Creek, complaint: Ronald Buentemeier stated that an onsite cannot be held until the snow is gone. Ronald Buentemeier motioned “to table until the next 310-meeting.” Lori Curtis seconded. Motion carried unanimously.

Dalimata, FL2018006, Deerlick Creek, bridge: An onsite inspection was set for Wednesday, April 4th, 10:40 A.M. at the site. The applicant explained they had a permit to place the bridge in the 1980’s. They removed it as they thought it was personal property, but now have to put it back.



ELK LLC, FL2018004, Swan River, stairs/walkway/remove debris etc.: Pete Woll reported he and Leo Rosenthal, FWP, held a pre-application onsite visit on 3/1. Pete explained this is the old tiki bar site at Marina Cay. The applicant wants to pull up the deck and clean up the old deck materials underneath it. The main project component in FCD's jurisdiction is the extension of the sidewalk across the edge of the abutment, which is now just gravel and weeds. Work will be done above the retaining wall, which was permitted some years ago. They will need to place a filter fence along the edge to isolate the construction area from the bay area. They have submitted plans that are more than adequate, the filter fence is just an extra precaution for water quality. Leo agreed and stated that he was ok with the board acting on the application as the applicant is under a time constraint. Ronald Buentemeier noted if the applicant needs to do other work he will need to contact the district office.

Pete Woll motioned "to approve the application with modifications. The modification is the additional use of filter fence along the retaining wall to protect the stream. The 15-day waiting period is waived. Additional comments will be in the Team Member Report." Lori Curtis seconded. Pete Woll reviewed the considerations in the Team Member Report, and concluded that there would not be effects on any of the five considerations, nor is there a reasonable alternative to accomplishing the project. Motion carried unanimously.

Peura, FL2017054C, Whale Creek, complaint: Ronald Buentemeier stated an onsite cannot be held until the snow is gone. Ronald Buentemeier motioned "to table until the next 310-meeting." Verdell Jackson seconded. Motion carried unanimously.

Pheifer Trust, FL2017057C, Nine Mile Creek, complaint: Ronald Buentemeier stated an onsite cannot be held until the snow is gone. Ronald Buentemeier motioned "to table until the next 310-meeting." Lori Curtis seconded. Motion carried unanimously.

Pohlman, FL2018002, Whitefish River, trail/dock/gang plank/structure: John Ellis explained the project is to build condos above the Whitefish River on west Second Street. Mindful Designs has built two other projects on this same street, both of which were permitted by the FCD board. This project went to the Whitefish Planning Board and the applicant was given a conditional use permit based on their receiving a 310-permit. An existing building at the site will stay there and be used commercially. Most of the existing parking lot will also remain. Photos of the project area were shown. The bank drops off and benches several times before getting to the river. John noted you can see buildings are past the top of the bank in some places. The applicant wants to do the same thing they have before, which is to build a condominium, a path down to the river, a retaining pond to catch run off, a pipe that goes underground which is rock armored at the entrance and exit, and a dock.

John stated Kenny Breidinger's Team Member Report shows "approval with modifications," and notes the current proposal "could be modified so that the residential structure is not situated on the immediate stream bank." John disagreed with FWP and read the definition of "immediate banks" from FCD's Adopted Rules: "Immediate banks" means the area above the mean high water mark and directly adjacent to the stream, which when physically altered or modified has the potential to affect the state of a stream." John noted where the



applicant wants to come off of the top bank 7 feet, he could not see that alteration has the potential to affect the state of the stream. He had two main questions: are they building over the immediate bank, and does the board want to approve the project when its site visibility is limited by snow cover?

Jason Pohlman introduced Josh Smith, a Geotech Engineer with Slopeside Engineering, and Greg Gunderson with Forestoration, and stated they both have been working with him on the project since September. Jason reviewed site plans and explained that, to make it fit, the front of the building is 7 feet past the 3032' elevation mark. Forestoration has developed a native vegetation plan for the sloped area and will be working on the trail. The water quality plan has been engineered through A-Z Engineering. The upper section is impervious, so when looking at slope stability that portion of soil isn't going to get loaded with water as it will be maneuvered to the detention pond. The detention pond is lined and engineered to withstand a 100-year flood event. An erosion control plan is also included. Jason agreed with John on the location of the immediate bank is. He noted the bank has been manipulated over time, there are gradual benches, and the distance from the project area to the high water point is 109 lateral feet.

Ronald Buentemeier asked John Ellis to read Kenny's Team Member Report again. John re-read it and stated that Kenny's position is that at the very top, which is the same level as the parking lot, where it starts sloping down is the top of the bank. He feels nothing should be built forward of this point. Ronald and John both questioned this determination. John re-read the definition of "immediate bank" and stated that we don't have a linear measurement for it. Dean Sirucek stated top of streambank and top of the terrace are two different things.

Jason pointed out that the 310 permit guidelines have a picture showing where a 310 permit is required, and it shows the streambank with slope clearly extending beyond it. What is being described as the top of slope is different from top of bank. Ronald mentioned the two other similar projects that Mindful Designs had done. He had been to one of the onsite inspections with John, and it was different because there is the bank and it makes a stair step, so that isn't the bank of the stream. Dean stated those higher terraces have not been inundated for maybe thousands of years. Leo said it is hard to determine where the top of the bank is. Ronald stated that he agrees that where the parking lot is located and where they want to extend 7 feet is not the top of bank. Leo asked if what it seems like we are struggling over is only 7 feet, why push it? Why does it have to be 7 feet hanging over the top of the terrace when there is plenty of room behind it?

Jason explained city zoning regulations for that area is high density, multi-family, residential, and the professional office is under the conditional use permit. To meet the zoning regulations on this particular lot, the parking lot needs to have 2.1 spaces per residential space and 1 space per 400 feet of professional office space. With the existing building there is not an additional 7 feet to push it back. There will be a day-light basement, which means the slope will be unloaded by taking out 10 feet of soil vertically, so the weight of the building is less than the soil removed. Between unloading the slope and implementing the water quality plan and native plant restoration, we are doing what we can to prevent any negative impact on that stream. It is 101 feet from the front of the building to the high water mark. In reference to the pond, we don't like to put ponds on slopes, but in this case it



will have an impermeable liner to slow the water down and filter it, so we are not adding water to that location. The natural bench makes it a good location for the pond.

Lori Curtis asked Greg Gunderson to explain what he will do to balance the pressure out on the bank. Greg provided a plant species list, diagrams and descriptions. Greg stated the photos were useful despite the snow cover, because you could see some native brush, such as chokecherries, near the top, but nothing was sticking up from the snow further down the bank. This is because historically, the hillside was cleared and highly disturbed. It currently has very little native vegetation and many weeds. Forestoration put together a robust planting plan based on the city's water quality protection ordinance which enables us to build like this if a revegetation plan puts the site in better condition. Forestoration did similar work for the two other projects just downstream, and the company has a lot of experience in trail building throughout Flathead County. This would be a simple walking path with native shrubs/vegetation extending down to the high water mark. The pond will be planted as heavily as possible with several inches of mulch substrate on top of the liner. The pond will not always hold water, but will dry out, and the plants help with uptake of nutrients.

Ronald stated we need to decide if the project, where the building extends 7 feet over the top of the bank, is within our jurisdiction. The FWP recommendation is to approve with modifications, such that the structure is not situated on the immediate stream bank. John Ellis re-read the definition of immediate bank and Rule 5. Lori asked if the district has a definition for top of bank. Ronald stated no, in the past we have consistently taken jurisdiction from the top of the bank 20 feet back. We can use that same procedure and decide we have jurisdiction, we can choose what FWP is recommending, or what John is recommending.

John Ellis motioned "to find this is within the jurisdiction of the Flathead Conservation District, all of the parts of the project." Dean Sirucek seconded. Motion carried unanimously.

The applicant asked for clarification of the motion. John stated the motion is deciding if we have jurisdiction over the entire project. Ronald added our traditional practice is that we take jurisdiction to the very top bank and 20 feet back toward the building. We voted that we are going to continue that practice.

Lori asked that, given the zoning regulations, if there was a way the design could be adjusted for that 7 feet. Leo asked if the structure is part of the application. Jason responded that previously the building was not part of any applications. Ronald stated that in the previous project he visited, the building did not extend over the top of the bank. The applicant cited other definitions of top of bank, and asked where the top of bank would qualify here. John responded that the top of the bank is where the level of the parking lot begins to slope down. Leo asked about the two previous projects and if they were treated in the same way. John explained that they were different because the land sloped along more gently at the top before going down to the river whereas the current one is more abrupt. Leo asked if jurisdictionally it would be the same as the other two. John stated yes. Ronald Buentemeier stated we are being consistent, but the FWP report recommends not allowing



the 7 feet over, and this has to be resolved before we can move forward. Leo stated he could not respond for Kenny.

Lori commented to the applicant that they are clearly sensitive to potential issues and are meeting the City's requirements. FCD has to follow its rules and work with FWP to prevent problems. The applicant is attempting to mitigate problems in their project proposal.

Ronald stated that we need clarification from Kenny before making a decision. Leo asked the applicant about their timeline, and the applicant wished to start construction next month. The board discussed the possibility of holding a second onsite inspection with Leo. Leo explained that he needed to be sensitive to Kenny's recommendation and his management area. In addition, this application was more complex than most. Ron recommended tabling it until a response is received from Kenny.

Pete asked John about his ability to see the site through the snow. John explained that it was not possible to see the ground, and that this case might be improved if it were because then it could be compared to similar project sites. This particular site has a steep drop from the parking lot to the first bench while the other one sloped gradually. John did not think the building is on the immediate bank, but goes over the top of the bank as we historically treat a bank.

Greg explained that he thought the top of bank was where the lower terraces are based on vegetation. The parking lot was flattened in the past, and material was pushed over the top of the first pitch. The upper pitch is modified and not a natural slope. He and the other consultants explained that their plans call for removing most of the soil from the top of the slope for the daylight basement on the bottom level. This means the building will not be extending beyond the top of the bank. Moving the structure back 7 feet would make it impossible to install the bottom level of the condo. They reiterated their focus on addressing soil stability and water quality management in designing this site.

Lori said that unfortunately Kenny is not here to address the concerns at this time, so we need to resolve that somehow. Pete asked if Kenny had seen same information we saw tonight. John responded yes, with the exception of some of the things (e.g., native vegetation/landscape plan) that were brought to the meeting. Leo offered to try to talk to Kenny on Friday and relay this information so the board could act on this at the business meeting, and he asked if this would satisfy everyone's requirements.

Lori Curtis motioned "to table the application until the business meeting." Pete Woll seconded. Motion carried unanimously.

Siderius, FL2018005, Flathead River, bank stabilization/dock: Pete Woll explained this application is for maintenance on the rip rap, sloping the bank, seeding and a dock. Doug Siderius noted this is a property on Old Steel Bridge Road. An area of the rip rap has failed and needs maintenance, and the goals are to re-slope the bank, replace the rock and put in a dock. An onsite inspection was set for Tuesday, March 13, 10:30 A.M. at the site.



Smith, FL2017062, Flathead River, road/driveway: Leo Rosenthal explained we have been waiting until spring to hold an onsite inspection. A tentative onsite inspection was set for Wednesday, April 4, noon at the site. The landowner and Mark Siderius will be contacted to see if this date/time works. Lori Curtis motioned "to table." John Ellis seconded. Motion carried unanimously.

Stalowy, FL2016050, Bear Creek, litigation: Valerie Kurth stated when Caitlin Overland last spoke to the board, the petitioners had requested an extension of the timeline. The request was received; it did not essentially change the overall timeline but moved back the deadline for the opening brief. Flathead CD's response brief will be due April 27th.

Sundh, FL2018003, Flathead River, bank stabilization: Dean Sirucek reported this is a request to repair rip rap and is within jurisdiction of the Flathead CD. They had a previous 310-permit for rip rap, and now approximately 100 feet of it has slumped. The onsite was held March 16th and he and FWP recommended to approve as proposed. Dean reviewed the considerations in the Team Member Report and showed photos of the area.

Dean Sirucek motioned "to approve the application as submitted. The 15-day waiting period is waived." Lori Curtis seconded. Motion carried unanimously.

NEW BUSINESS

Draft Code Amendments:

Verdell Jackson reported he and John Ellis worked on draft code amendments, and noted that deletions are highlighted in **yellow** and additions are **bolded**.

75-7-103. Definitions. (8) "Team" means one **or more** representatives of the supervisors **and one or more** representatives of the department **and the applicant or the applicant's representative**.

75-7-112. Procedure for considering projects -- team. (3) Each member of the team shall recommend in writing, within 30 days of the date of inspection, denial, approval, or modification of the project to the supervisors. **The applicant may waive participation in this recommendation. The applicant or his representative may also submit, in writing, any additional information or project modifications within 30 days of the inspection.**

Verdell explained this would give us more flexibility, allow us to do more research, put more thought into the Team Member Report allowing for better quality, and still invite the applicant to participate after the report is submitted.

Wording regarding the applicant submitting additional information within 30 days was discussed. John Ellis stated the current law gives the applicant 30 days from the date of inspection; the supervisor and FWP have the same option. John explained what is written in bold is simply to try to make sure that everyone is treated fairly and the proposed changes would not alter the rights the applicant has under current law. Our complaint as a board is that this team structure, as interpreted by Donald MacIntyre, does not work as well as our former process. Now we have to do the report during the onsite, even in the snow or rain, and we need to explain to the applicant that they are a member of the team and they have to



sign the Team Member Report that they may not agree with. Ronald noted we have to remember to make sure to tell the applicant this will be discussed at the next 310-meeting, but it is partially dependent upon the applicant. If they want to submit a response it has to be submitted prior to that date.

Lori Curtis noted Laurie Zeller's email, which stated *other conservation districts should have the opportunity to weigh in on the proposal and whether there is enough support to go forward with it. Going into the legislature without having CDs on board could result in unintended consequences.* This is a big proposal to make for all conservation districts. Lori asked if we had done anything to vet this by other conservation districts, or was the intention to go to legislature without first going to the other districts. Ronald said that it would have to go to MACD, and would be disseminated from there. DNRC would require all districts to have it, and there is a long standing 310 committee that would have to take up this proposal. Supervisors and staff agreed that the Supervisor Forum on March 29th would be a good opportunity to first discuss the proposal with other Area V districts, Laurie Zeller, and Don MacIntyre

MWI: Pete Woll reported Jim Simpson wants to sunset the MWI 501(3)(c) and split the funds between the three districts that originally invested in it.

Pete Woll motioned "to send Lake CD an email stating the Flathead CD recommends sun setting the 501(3)(c) for MWI, and any leftover funds be distributed among the three districts." Lori Curtis seconded. Motion carried unanimously.

DNRC AIS grant support: Valerie Kurth reported DNRC has Aquatic Invasive Species (AIS) grant funds available, and applications are due this Thursday. Flathead CD was contacted by Lake CD with a request for a letter of support, as Lake CD is are sponsoring a grant from Flathead Lake Biological Station for an AIS workshop in May.

Lori Curtis made a motion "that Ronald Buentemeier sign the letter of support to Stefanie Hester, DNRC, for the Lake CD and Flathead Lake Biological Station grant." Dean Sirucek seconded. Motion carried unanimously.

MATTERS OF THE BOARD/STAFF

Boundary Sign update: Valerie Kurth reported an email was received from Lincoln CD stating their board supported applying for a 223 grant for the sign between Flathead and Lake Counties. Lake CD will submit an application the next quarter and administer the grant.

Supervisor Forum topics: Valerie Kurth reported she and Heidi from Lake CD worked on the Supervisor Forum agenda and asked if supervisors had comments or topics they would like added. The Forum will be March 29th. Lunch cost is \$10. This will be on the business meeting agenda.

Interviews: Valerie reported interviews for the Assistant Conservationist have been scheduled.



Trumbull Creek Landowners Meeting: Valerie Kurth reported approximately 20 people attended the Trumbull Creek meeting last Thursday at the Birch Grove Community Center. Most were pleased to have a discussion forum for the flooding issue on Trumbull Creek. Ronald Buentemeier stated one landowner was concerned about liability if a culvert is installed on their property. Another landowner offered to use his heavy equipment if there were actions he could take that would help on his property. The representatives from the airport and County Road and Bridges Department were both very responsive to the landowners.

The next business meeting is scheduled for Monday, March 26, 2018, 7:00 P.M. in the conference room of the USDA building at 133 Interstate Lane, Kalispell.

Adjournment: Pete Woll made a motion "to adjourn." Lori Curtis seconded. Motion carried unanimously. As there was no further business, the meeting was adjourned at 9:13 P.M.

Submitted By: Ginger Kauffman, Administrator
and Valerie Kurth, Resource Conservationist

Minutes approved by FCD Board motion made on:

<u>3/26/2018</u>	<u>Ronald Buentemeier</u>	<u>Chair</u>
(Date)	(Signature)	(Title - Chair etc.)

